LIBRARY
SUPREME COURT, U. S.

Office Supreme Court, U.S.
FILED
NOV 30 1965
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 784

DORIS WATKINS, LARRY D. ROBINSON, JANELLE HYLTON, and CLARENCE L. PROCTOR,

Petitioners,

—v.—

THE SUPERIOR COURT, LOS ANGELES COUNTY, CALIFORNIA, and J. HOWARD ZIEMANN, JOSEPH L. CALL, FRED P. PERRAGA, JOHN G. BARNES, VERNON SPENCER, MARK BRANDLER, ROBERT CLIFTON, BERNARD LAWLER, JOSEPH A. WAPNER, RAYMOND ROBERTS, BERNARD S. SELBER, RICHARD S. C. HAYDEN, EDWARD C. OLSON, KATHLEEN PARKER, MARIO L. CLINCO, JOSEPH SPRANKLE, JR., and ROBERT FEINERMAN as Judges

THE MUNICIPAL COURT OF LOS ANGELES, CALIFORNIA, and MAURICE T. LEADER, IRWIN J. NEBRON and PHILIP M. SAETA as Judges

THE JUVENILE COURT OF LOS ANGELES COUNTY CALIFORNIA, and WILLIAM E. MACSADEN as Judge

PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEALS OF CALIFORNIA, SECOND DISTRICT

JACK GREENBERG
LEROY D. CLARK
CHARLES STEPHEN RALSTON
10 Columbus Circle
New York, New York 10019

RAYMOND L. JOHNSON
4840 W. Washington Blvd.
Los Angeles, California

HERMAN T. SMITH
600 East 103rd Street
Los Angeles, California

ANTHONY G. AMSTERDAM
3400 Chestnut Street
Philadelphia, Pennsylvania

Attorneys for Petitioners

INDEX

PAGE

Citations to Decisions Below 1

Jurisdiction 2

Question Presented 3

Constitutional and Statutory Provisions Involved 4

Statement 4

How the Federal Questions Were Raised and Decided Below 10

Reasons for Granting the Writ 11

Petitioners Adequately Alleged in Their Petition for Writ of Prohibition and Mandamus Facts That Establish That Their Continued Prosecutions Violate Their Right to Adequate Representation by Counsel in Violation of the Fourteenth Amendment to the Constitution of the United States 14

A. Under California Law, Petition for Writ of Mandamus and Prohibition Is the Proper Remedy 14

B. The Allegations of the Petition for Prohibition and Mandamus Establish a Denial of Due Process in Violation of the Fourteenth Amendment to the Constitution of the United States in That Petitioners Have Been Denied Adequate Representation by Counsel 15

PAGE

C. Petitioners Were Denied Due Process of Law by the Failure of Respondents to Provide for Counsel Immediately After Arrest 19

CONCLUSION 21

APPENDICES:

APPENDIX A—

Proceedings Below 1a

APPENDIX B—

California Statutes Involved 21a

TABLE OF CASES

Badillo v. Superior Court, 46 Cal. 2d 269, 294 P. 2d 23 (1956) 14

Bogart v. Superior Court of Los Angeles County, 60 Cal. 2d 436, 34 Cal. Rptr. 850, 386 P. 2d 474 (1963) 14

Brubaker v. Dickson, 310 F. 2d 30 (9th Cir. 1962) 18

Coleman v. Alabama, 377 U. S. 129, 133 15

Cornell v. Superior Court, 52 Cal. 2d 99, 102-03, 338 P. 2d 447, 449 (1959) 18

De Rocke v. United States, 337 F. 2d 606 (9th Cir. 1964) 18

Escobedo v. Illinois, 378 U. S. 478 19

Funk v. Superior Court, 52 Cal. 2d 423, 340 P. 2d 593 (1959) 15

PAGE

Gideon v. Wainwright, 372 U. S. 335 ..... 16, 18, 19
Goforth v. United States, 314 F. 2d 868 (10th Cir. 1963) 18

Hamilton v. Alabama, 368 U. S. 52 19
Hammerstein v. Superior Court of California, 341 U. S. 491 2
Harvey v. Mississippi, 340 F. 2d 263 (5th Cir. 1965) 16
Hawk v. Olson, 326 U. S. 271, 278 (1945) 17

Johnson v. United States, 328 F. 2d 605 (5th Cir. 1964) 17
Jones v. Cunningham, 313 F. 2d 347 (4th Cir. 1963) 17

Konisberg v. State Bar, 353 U. S. 252, 253-258 11

Lambert v. Municipal Court, 53 Cal. 2d 690, 3 Cal. Rptr. 168, 349 P. 2d 984 (1960) 14

Pennsylvania ex rel. Herman v. Claudy, 350 U. S. 116 15
Powell v. Alabama, 287 U. S. 45 (1932) 16
Powell v. Superior Court, 48 Cal. 2d 704, 312 P. 2d 698 (1957) 15

Rescue Army v. Municipal Court, 28 Cal. 2d 460, 171 P. 2d 8 (1946) 14
Rescue Army v. Municipal Court of the City of Los Angeles, 331 U. S. 549 2

Townsend v. Bomar, 331 F. 2d 19 (6th Cir. 1964) 18
Turner v. Maryland, 318 F. 2d 852 (4th Cir. 1963) 18

Vance v. Superior Court, 51 Cal. 2d 92, 330 P. 2d 773 (1958) 15

Whitney v. Municipal Court, 58 Cal. 2d 907, 27 Cal. Rptr. 16, 337 P. 2d 80 (1962) 14

PAGE

STATUTES

California Code of Civil Procedure:

§§1084, 1085 ..... 4, 6, 24a
§1086 ..... 4, 25a
§1102 ..... 4, 6, 25a
§1103 ..... 4, 25a

California Penal Code:

§858 ..... 4, 9, 21a
§859 ..... 4, 9, 21a
§859a 4, 22a
§987 ..... 4, 23a
§987a 4, 9, 23a

OTHER AUTHORITIES

Boone, Prohibition: Use of The Writ of Restraint in California, 15 Hastings L. J. 161, 162 (1963) 6
Los Angeles: And Now What?, America, Vol. 113, No. 9, Aug. 28, 1965, p. 199 21
Mozer, There's No Easy Place to Pin the Blame, Life, Vol. 59, No. 9, Aug. 27, 1965, pp. 31-33 21
No Panacea, The Christian Century, Vol. LXXXII, No. 34, Aug. 25, 1965, pp. 1027, 1028 21
Report of the Joint Committee on Legal Aid of the Province of Ontario, pp. 101-109 (March, 1965) 17
Silverstein, Defense of the Poor in Criminal Cases in American State Courts, Vol. II, pp. 60, 75 (The American Bar Foundation, 1965) 9, 17

IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. .....

DORIS WATKINS, *et al.*,

Petitioners,

—v.—

THE SUPERIOR COURT, LOS ANGELES COUNTY, CALIFORNIA, *et al.*

PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEALS OF CALIFORNIA, SECOND DISTRICT

Petitioners pray that a writ of certiorari issue to review the judgment of the California District Court of Appeals, Second District, entered in the above-entitled case on October 18, 1965.

Citation to Decisions Below

The decisions of the California District Court of Appeals, Second District, and of the Supreme Court of California are not reported and are set forth in Appendix A *infra*, pp. 15a and 20a.

Jurisdiction

The judgment of the California District Court of Appeals, Second District, denying petitioners' petition for mandamus and prohibition without opinion was entered on October 18, 1965. Petition for hearing to review the decision of the Court of Appeals was filed in the Supreme Court of California and was denied without opinion on November 3, 1965.

Jurisdiction of this Court is invoked pursuant to Title 28 U. S. C. Section 1257(3), petitioners having asserted below, and asserting here, deprivation of rights, privileges, and immunities secured by the Constitution of the United States.

The denial of writs of mandamus and prohibition to restrain a lower court proceeding was a final judgment of the state court that can be reviewed by writ of certiorari. See, *Rescue Army* v. *Municipal Court of The City of Los Angeles,* 331 U. S. 549.

Since the granting of a petition for hearing to review the lower court's determination is a matter of discretion with the Supreme Court of California, certiorari in this Court lies to review the decision of the District Court of Appeals. See, *Hammerstein* v. *Superior Court of California,* 341 U. S. 491.

Question Presented

Some 4,000 persons, including petitioners, were arrested over a nine-day period in Los Angeles County in August, 1965; the great majority are unable to pay for counsel. Respondent judges have in almost all instances appointed the county public defender whose office consists of 108 attorneys, one-half of whom regularly handle criminal cases. The 4,000 new cases have in a short time been superimposed on a yearly load of 10,000 cases. Different public defenders have represented defendants at different stages of the proceedings; counsel have been able to consult with clients for periods of only five to ten minutes before important proceedings. Petitioners petitioned the Supreme Court of California and the District Court of Appeals of California for writs of prohibition and mandamus on the grounds that they were being denied the right to adequate representation in violation of the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States; no responsive pleading has ever been filed. The petitions were denied without hearing and without opinion.

On this record, did the California courts err in denying writs of mandamus and prohibition that would:

(a) require the trial judges to appoint counsel, who stood ready to accept appointment, other than the public defender, or otherwise assure adequate representation of the members of petitioners' class;

(b) require the appointment of counsel as soon after arrest as practicable and before initial arraignment?

Constitutional and Statutory Provisions Involved

This case involves Section 1 of the Fourteenth Amendment to the Constitution of the United States.

This case involves also the following statutes of the State of California: California Penal Code §§858, 859, 859a, 987, and 987a; California Code of Civil Procedure §§1084-1086, 1102-1103. (The text of these sections is set out in full in Appendix B *infra*.)

Statement

Between August 11 and August 20, 1965, rioting occurred in the Watts area of Los Angeles County, California. Approximately 4,000 persons, including named petitioners, were arrested and charged with various felonies, misdemeanors, and juvenile offenses. Substantially all the persons arrested have had bail set in initial arraignments, have had preliminary examinations completed, and have been given a date for trial.

The named petitioners are:

(1) Doris Watkins, who was charged with burglary. At arraignment she was unrepresented by counsel, and bail was set at $4,900, which she was unable to meet. At the preliminary hearing the court appointed a member of the Los Angeles County Public Defender's office; he talked with her for only a brief period to get information relative to a reduction in bail. The court found probable cause for holding her for trial, and Mrs. Watkins was released under $250 bail. Later, the petitioner plead not guilty at a hearing where she was represented by a different member

of the public defender's office. Subsequently, petitioner had a 25-minute interview with another attorney from the public defender's office (R. pp. 13-14; Appendix A, pp. 11a-12a).

(2) Larry D. Robinson was charged with disturbing the peace. At arraignment, where petitioner was not represented, he plead not guilty and bail was set at $1,000. Although petitioner informed the court he wished representation by private counsel, the court urged him to accept the public defender. Petitioner is not able to pay private counsel (R. p. 16; Appendix A, p. 14a).

(3) Clarence Proctor was charged with burglary. He could not meet bail of $4,750 and remained in jail from August 14, 1965, until his trial on November 17, 1965. Petitioner was unrepresented at the hearing when bail was set. At the preliminary hearing on August 20, 1965, the court appointed the public defender. The attorney consulted with petitioner for approximately two minutes concerning the circumstances of his arrest. Bail was reduced to $2,500, which petitioner was also unable to meet. Despite petitioner's letters to the public defender's office requesting consultation, no one from the office interviewed him until October 3, 1965. At that time a member of the office told petitioner that he had been very busy; they consulted for about five or six minutes (R. pp. 14-16; Appendix A, pp. 12a-14a).

(4) Janelle Hylton was arrested and charged with burglary. At arraignment on August 19, 1965, she was unrepresented by counsel and bail was set at $4,500, which petitioner was unable to meet. At the preliminary hearing on August 24, the public defender was appointed and he interviewed petitioner for approximately five minutes. The

court bound her over for trial and she was released on her own recognizance. Up to the time of the filing of this suit, petitioner had had two other brief interviews with different members of the public defender's office at her two appearances to enter a plea (R. pp. 12-13; App. A, pp. 10a-11a).[1]

On October 8, 1965, pursuant to Sections 1085ff. and 1102ff. of the California Code of Civil Procedure, petitioners filed on behalf of themselves, and all others arrested and charged with crimes arising out of the riots, a petition

---

[1] While the following information was not before the California courts and, therefore, not in the record, petitioners bring to the Court's attention the following proceedings, which are a matter of public record, but occurred subsequent to filing the petition:

Petitioners Watkins and Proctor were tried and convicted of trespass after the denial of relief in the California courts, on November 9 and 17, respectively. Proctor was sentenced to five days' imprisonment; a hearing for probation and sentencing of petitioner Watkins is set for December 3, 1965. Both petitioners were represented by the public defender. These proceedings do not, of course, moot the individual or representative claims of the petitioners. As to petitioner Watkins, since the trial court has not finally disposed of her case under California law a court, by writ of prohibition, may void her conviction in order to afford complete relief. See, Boone, *Prohibition: Use of The Writ of Restraint in California,* 15 Hastings L. J. 161, 162 and cases cited therein. At the time of filing, the petitioners proceeded as representatives of of a class of untried defendants, many of whom have not yet been tried. Unavailability of adequate representation for all 4,000 defendants was the occasion for the filing of this proceeding for prerogative writs: the same unavailability of counsel required proceeding in representative form; if the State of California, by its unilateral decision to try the individual petitioners can defeat this class action, there is no way in which the fundamental constitutional claims of this large class of persons can be protected.

Petitioners Hylton and Robinson were represented by private counsel secured by the Los Angeles NAACP chapter subsequent to the filing of this action. They were tried on November 10th and 22nd, 1965, respectively, and both were acquitted.

for a writ of prohibition and mandamus in the Supreme Court of California (R. pp. 1-19; App. A, pp. 1a-14a). No responsive pleading was filed. The Supreme Court, on its own motion, referred the petition to the California District Court of Appeals, Second District, for determination. The petition claimed that petitioners' right to adequate representation by counsel, guaranteed by the Fourteenth Amendment to the Constitution of the United States, was being abridged, and asked the Court to require respondent judges to:

> (1) Appoint counsel with adequate preparation, investigation and counseling before conducting any further proceedings;
>
> (2) Nullify any prior proceedings in which Petitioners or members of their class, after securing adequate counsel, can demonstrate they were prejudiced by the lack of counsel;
>
> (3) Furnish the members of Petitioners' class with lists of private counsel, if the Public Defender's Office is found to have an inordinate case load, and to provide compensation for such counsel as are chosen by the indigent defendants (R. p. 9; App. A, p. 7a).

Although no responsive pleadings was filed, the district court denied the petition without a hearing and without opinion on October 18, 1965 (R. p. 20; App. A, p. 15a).

Subsequently, on October 25, 1965, petitioners filed in the Supreme Court of California their petition for hearing, pursuant to Rule 28 of that court. The petition sought to transfer the cause to that court to review the denial of the petition for prohibition and mandamus and raised the same

federal constitutional claims urged below (App. A, pp. 16a-19a). In addition, petitioners moved for a temporary restraining order restraining the respondents from conducting any further criminal trials or juvenile proceedings affecting members of petitioners' class pending disposition of the petition for hearing. Again, no responsive pleading was filed.

On November 3, 1965, the Supreme Court of California denied the petition for hearing summarily, without opinion (App. A, p. 20a). Again, petitioners were not given the opportunity to present proof of their allegations. Since there were neither responsive pleadings filed nor evidence taken, the allegations concerning the individual petitioners must be taken as true. The following allegations relating to the class of 4,000 defendants which the individual petitioners represent are also undenied and similarly must be taken as true.

Petitioners are unable to pay for the services of private counsel. Of the 4,000 persons arrested and charged with various felonies and misdemeanors, virtually all are similarly indigent and unable to pay for counsel of their choice (R. pp. 7-8; App. A, pp. 5a-6a). Moreover, at the time of the bringing of this action, there were more than 700 defendants still in jail because they could not make bail.

Pursuant to California procedure, the individual respondents are the twenty-three judges conducting the pre-trial and trial phases of the prosecutions of petitioners and other members of their class, i.e., persons arrested during the riots. They are charged under California law to satisfy the requirement imposed by the Fourteenth Amendment to the United States Constitution that all persons charged

with criminal violations, regardless of financial ability, be afforded adequate representation by counsel.[2] They have purported to discharge their duty by appointing the Los Angeles County Public Defender's Office to represent all but a few of the indigent defendants who appear without counsel (R. pp. 5-6; App. A, p. 4a).

The Los Angeles County Public Defender's Office consists of approximately 108 lawyers,[3] of whom about one-half are assigned to handle criminal cases at the pre-trial and trial stages. On the average, the case load of the Office has been 10,000 cases per year. Thus, the Office has been charged with defending 4,000 additional cases within a brief period of time without the expansion of its legal and investigative staff that would be required to deal with such an unprecedented load (R. pp. 5-6; App. A, pp. 4a, 18a).

The prosecutions of the persons arrested have been proceeding rapidly (R. pp. 7-8; App. A, p. 6a). Since the end of August, 1965, virtually all the defendants have been arraigned, have had pre-trial hearings, and have had trial dates set. Largely because of the lack of adequate legal advice immediately after arrest, bail at two or three times

---

[2] Calif. Penal Code, §§858, 859, 987a. See Appendix B, *infra*.

[3] According to the official report of the Public Defender's Office for 1964, there were 66 lawyers in the office. (See Silverstein, *Defense of the Poor in Criminal Cases in American State Courts*, Vol. II, p. 60 (American Bar Foundation, 1965).) The figure of 108 includes, according to information obtained by petitioners' counsel, those hired since the beginning of 1965. Of course, a hearing at which evidence could be developed would present a factually correct record.

the normal amount was set by some of the respondent judges in many instances (R. p. 4; App. A, p. 3a).[4]

As a result of the large additional number of defendants, the Public Defender's Office has been unable to provide adequate counsel to those it represents. For many defendants, a different public defender has appeared at each stage of the pre-trial proceedings (R. p. 5; App. A, p. 4a). In many instances, the various public defenders assigned indigents have consulted with defendants only five to ten minutes before they were to appear at a preliminary hearing (R. pp. 5, 12, 15; App. A, pp. 4a, 10a, 13a). Although many defendants have asked that private counsel be assigned and compensated by the court, and such private counsel were available for court-appointment through lists furnished by bar associations and the Los Angeles Chapter of the NAACP, the respondent judges have refused to appoint private counsel in sufficient numbers to relieve the public defender's office (R. pp. 6, 16; App. A, pp. 4a-5a, 14a).

How the Federal Questions Were Raised and Decided Below

In their petition for writs of mandamus and prohibition, petitioners alleged that unless the relief sought was granted they would continue to suffer the denial of their rights under the Fourteenth Amendment to the Constitution of the United States and the Constitution of California. It

---

[4] In addition, members of the class are being tried daily, with the four original petitioners herein having been tried already. On the basis of information they have received, counsel for petitioners estimates that about two-thirds of those arrested and who have not plead guilty have been tried, and all will be tried in the next one to two months.

was claimed that their continued prosecutions under the circumstances alleged in their petition would result in the effective denial of their right to adequate representation by counsel guaranteed by the due process and equal protection clauses of the Fourteenth Amendment. Also, it was alleged that the respondents had no other adequate remedy, since a lack of proper legal counsel would render it impossible for the petitioners and the members of their class to preserve their constitutional claims and to perfect appeals to raise these issues. These same claims were made in the petition for hearing filed in the Supreme Court of California.

Since, as will be shown below, there exists no adequate state ground for the decision of the court below, it must be deemed that it rested on a decision on petitioners' federal claims. See, *Konigsberg* v. *State Bar,* 353 U. S. 252, 253-258.

Reasons for Granting the Writ

This petition, the allegations of which have never been denied, presents important questions concerning the obligation of a state to provide adequate counsel for indigent defendants. The prosecutions involved herein arose out of rioting which broke out in the Watts area of Los Angeles and which continued for a number of days last summer. The riots—which this petition certainly does not attempt to justify—occurred because of the continued injustices that the poor believe are inflicted on them by an indifferent, affluent society.

In the way it is conducting these prosecutions, the State of California is merely perpetuating the same injustices which gave rise to the disturbances. It is trying thousands

of indigents in a rapid, routinized manner which fails to ensure that every individual will have at least the protection of counsel who is able to devote the time required to consult with his client fully and to prepare adequately his defense. To these defendants justice can appear only as an impersonal machine, a mere tool of the same powers in society that have put them and kept them in their position of poverty.

In this case petitioners are attempting, by a procedure clearly appropriate under California law (see *infra*), to correct this situation and gain for all those arrested in Watts proper representation by counsel. The present proceeding is the only way that the rights of the Watts defendants can be adequately vindicated. Day by day, defendants are being held in default of exorbitant bail, are being tried without adequate preparation of their cases and, perhaps most important, are being forced by all of the pressures of their situation, including lack of needed legal advice, to plead guilty to the charges against them. If relief is not given here, there exists no procedure by which the constitutional claims of so large a number of defendants can, with any fair assurance, be presented to any court for hearing. They must have adequate counsel now to advise them concerning their pleas, to ensure that all constitutional defenses will be raised and preserved and to enable them to perfect appeals.

However, the State of California has conspicuously ignored the serious issues raised by this action. Neither the respondent judges nor the State have filed responsive papers. Petitioners have been denied in both the District Court of Appeals and the Supreme Court of California all opportunity for hearing, at which they may offer proof

and argue the validity of their constitutional claims. Their petitions have been denied summarily without opinion with the result that petitioners have not been given a hint of the basis for denial.

The very manner in which the State of California has thus callously disposed of the present case reinforces the denials of federal constitutional rights of the petitioners in their criminal prosecutions and makes it imperative that this Court accept jurisdiction to affirm the obligation of the State for fundamental fairness and civilized procedure in all criminal proceedings, regardless of the indigency of the defendants or the abhorrence to the community of the offenses with which they are charged. Justice consistent with due process and equal protection of the law cannot be done, nor the confidence in law essential to its maintenance be preserved, by the careless and mechanical processing, indifferent to fundamental constitutional guarantees, which California has given and is giving these serious criminal prosecutions.

I.

Petitioners Adequately Alleged in Their Petition for Writ of Prohibition and Mandamus Facts That Establish That Their Continued Prosecutions Violate Their Right to Adequate Representation by Counsel in Violation of the Fourteenth Amendment to the Constitution of the United States.

A. Under California Law, Petition for Writ of Mandamus and Prohibition Is the Proper Remedy.

California law makes clear that the writ of prohibition and mandamus was the proper remedy if petitioners' federal constitutional claims are sustainable.

In a case closely analogous to this, the Supreme Court of California was petitioned for a writ of mandamus, and the court issued its writ of prohibition to halt a criminal trial until the petitioner had been properly informed of his right to counsel. *Bogart* v. *Superior Court of Los Angeles County,* 60 Cal. 2d 436, 34 Cal. Rptr. 850, 386 P. 2d 474 (1963).

Prohibition has issued to stop a criminal proceeding where the defendant was held to answer solely on illegally obtained evidence (*Badillo* v. *Superior Court,* 46 Cal. 2d 269, 294 P. 2d 23 (1956)); and where the prosecution was being carried out under a statute or ordinance claimed to be unconstitutional or otherwise invalid or inoperative (*Whitney* v. *Municipal Court,* 58 Cal. 2d 907, 27 Cal. Rptr. 16, 377 P. 2d 80 (1962); *Lambert* v. *Municipal Court,* 53 Cal. 2d 690, 3 Cal. Rptr. 168, 349 P. 2d 984 (1960); *Rescue Army* v. *Municipal Court,* 28 Cal. 2d 460, 171 P. 2d 8 (1946).) And similarly pre-trial mandamus has been used to review discovery orders of trial courts in criminal cases.

Powell v. *Superior Court*, 48 Cal. 2d 704, 312 P. 2d 698 (1957); *Vance* v. *Superior Court*, 51 Cal. 2d 92, 330 P. 2d 773 (1958); *Funk* v. *Superior Court*, 52 Cal. 2d 423, 340 P. 2d 593 (1959).

B. The Allegations of the Petitioner for Prohibition and Mandamus Establish a Denial of Due Process in Violation of the Fourteenth Amendment to the Constitution of the United States in That Petitioners Have Been Denied Adequate Representation by Counsel.

Since there were no responsive pleadings filed, no hearing afforded, no opportunity offered to develop facts by use of compulsory process, and no findings of fact made by either of the state courts below, the facts alleged in the petitions filed in the lower courts must be taken as true. Therefore, the only issue presented here is whether the allegations of petitioners are sufficient to establish a denial of petitioners' right to adequate representation by counsel. See, *Pennsylvania ex rel. Herman* v. *Claudy*, 350 U. S. 116; *Coleman* v. *Alabama*, 377 U. S. 129, 133.

Briefly summarized, the petition in the California courts alleged that petitioners and members of their class were, because of their indigency, being forced through the mills of justice in rapid order while being denied adequate counsel by the actions of the respondent courts and judges. Four thousand indigent persons were arrested in a period of nine to ten days (R. pp. 2, 5; App. A, pp. 2a, 4a). They were assigned the public defender as counsel, despite the fact that this resulted in a 40% increase in that office's annual case load over a span of two weeks. Numerous defendants requested that private counsel be appointed and compensated by the court (R. pp. 5-6; App. A, pp. 4a-5a). In spite of the enormous burden on the public defender, and

in spite of there being many private attorneys willing to accept appointments if compensated, the judges have refused these requests *(Ibid.)*. The result has been that, typically, defendants have had only hurried consultations with public defenders prior to their proceedings (R. p. 5; App. A, p. 4a).

The right to counsel is a requirement of due process of law under the Fourteenth Amendment. The right does not depend on the defendant's ability to pay for counsel, and where the defendant is indigent the court must furnish an attorney in all cases, felonies as well as misdemeanors. *Gideon* v. *Wainwright*, 372 U. S. 335; *Harvey* v. *Mississippi*, 340 F. 2d 263 (5th Cir. 1965).

In the present case, of course, counsel has been furnished in the form of the public defender. However, the right to counsel established by the Fourteenth Amendment is the right to adequate representation. *Powell* v. *Alabama*, 287 U. S. 45 (1932). The analogy between *Powell* and the present case is extremely close in that there the trial court appointed "all the members of the bar" (287 U. S. at 53) to represent the defendants. It was not until the day of trial that a particular lawyer was assigned the responsibility of conducting the defense. Thus, there was not enough time for counsel to give the attention and preparation necessary for an adequate defense. In the present case as well, it is petitioners' contention that the counsel could not possibly be deemed adequate.

Here, the issue presented by the facts is clear; whether 50 to 60 attorneys can adequately represent 4,000 defendants in a period of five months through the whole criminal pre-trial and trial process, including arraignments, preliminary hearings, preparation for trials and the trials them-

selves while those lawyers have obligations which otherwise fully occupy them. In a report issued by the American Bar Foundation in July, 1965, the Los Angeles public defender, "indicated that though in general he had adequate funds to run his office, he could use several additional deputies and more administrative personnel." Silverstein, *Defense of the Poor in Criminal Cases in American State Courts,* Vol. II, p. 75 (American Bar Foundation, 1965). This statement was made, of course, prior to the riots and arrests which led to a 40% increase in the office's case load. The uncontradicted allegations of the petitions are that the lawyers in the public defender's office have not been able to spend the time with petitioners and the other members of their class that would be necessary to adequately prepare defenses against the serious charges involved.[6]

As this Court has said, "The defendant needs counsel and counsel needs time." *Hawk* v. *Olson,* 326 U. S. 271, 278 (1945). Many courts have recognized that adequate representation is possible only when counsel is able to and does, in fact, spend sufficient time consulting with his client, investigating the circumstances of the case, and preparing for trial. See, e.g., *Jones* v. *Cunningham,* 313 F. 2d 347 (4th Cir. 1963); *Johnson* v. *United States,* 328 F. 2d 605

---

[6] Petitioners do not intend any criticism of the Los Angeles Public Defender's Office or of the public defender system in general. In the normal situation it may be adequate. Under circumstances such as obtained here, however, the office is simply not capable, because of a shortage in manpower, to handle the situation. For a comprehensive report and recommendations on various means of providing representation for the poor, including an analysis of the relative merits of public defender systems, see *Report of the Joint Committee on Legal Aid of the Province of Ontario* (March, 1965), generally, and particularly at pp. 101-109.

(5th Cir. 1964); *Townsend* v. *Bomar,* 331 F. 2d 19 (6th Cir. 1964); *Brubaker* v. *Dickson,* 310 F. 2d 30 (9th Cir. 1962); *De Rocke* v. *United States,* 337 F. 2d 606 (9th Cir. 1964); *Turner* v. *Maryland,* 318 F. 2d 852 (4th Cir. 1963); *Goforth* v. *United States,* 314 F. 2d 868 (10th Cir. 1963). And in *Cornell* v. *Superior Court,* 52 Cal. 2d 99, 102-03, 338 P. 2d 447, 449 (1959), the California Supreme Court said:

> If the attorney is not given a reasonable opportunity to ascertain the facts surrounding the charged crime so that he can prepare the proper defense, the accused's basic right to effective representation would be denied.

Thus, this case presents the important issue of not merely the right of an indigent defendant to counsel, but the obligation of state courts to ensure that the appointed counsel is able to do an adequate job of representation. That is, when the circumstances are such that a public defender's office, or other source of free legal aid, cannot provide adequate counsel, must the court appoint private attorneys with compensation or employ some other means to ensure adequate representation? Surely, *Gideon* requires that the substance and not merely the form of representation of indigents be assured. Therefore, that case means that state court judges must consider the actual circumstances surrounding the prosecution of indigents and to consider and utilize alternative methods of providing counsel where such action is necessary.

C. Petitioners Were Denied Due Process of Law by the Failure of Respondents to Provide for Counsel Immediately After Arrest.

In addition, this case raises the question of the obligation of state courts to provide indigents with counsel immediately or as soon after arrest as practicable and before any proceeding at which their rights might be affected.

The right to counsel is the right to be represented at every stage of the proceeding at which the rights of a defendant may be affected. *Hamilton* v. *Alabama,* 368 U. S. 52. Moreover, *Escobedo* v. *Illinois,* 378 U. S. 478, establishes the importance of the right in the period between arrest and arraignment.

Since *Gideon* v. *Wainwright,* 372 U. S. 335, establishes that the right to counsel cannot depend upon the ability of an accused to pay, it follows that an indigent must be afforded the same protection as one who has retained his own lawyer at *all* stages of the criminal process. Therefore, the state had an obligation to provide counsel after arrest and prior to the initial arraignment.

The experience of petitioner Proctor provides vivid proof of the necessity of such a rule. Proctor was arrested on August 14, 1965. He was arraigned four days later on August 18th. During the period between arrest and arraignment he saw no attorney and the arresting authorities made no effort to secure him legal aid. At arraignment he was unrepresented by counsel; no inquiry was made by the judge as to any prior convictions or present employment. Thus, bail was set at $4,950, which Proctor was unable to make. On August 20, 1965, a preliminary hearing was held. The public defender was appointed as counsel and had only a two-minute consultation with Proctor. Prob-

able cause to hold him for trial was found and bail was set at $2,500; again, he was unable to make this amount (R. pp. 14-16; App. A, pp. 12a-14a).

Proctor remained in jail for three months awaiting trial; he wrote many letters to the public defender asking for interviews, but was unsuccessful until October 3rd, when he had a six-minute interview with a lawyer from that office (R. p. 4; App. A, p. 13a). Finally, he was tried on November 17, 1965, found guilty of trespass and sentenced to *five days* in the county jail.

The case of this petitioner is not unique; he represents the class of more than 700 other persons in jail when this action was filed because they could not make bail. If counsel had been provided for them prior to arraignment, a proper amount of bail might have been set. These defendants require adequate counsel now to secure reductions in bail and to ensure that their pre-trial constitutional rights will not be lost.[6]

---

[6] The more than 500 juvenile offenders arrested also suffered from not having adequate counsel. According to a report issued by the Los Angeles County Probation Department in November, 1965, the Los Angeles County Juvenile Court considered 534 juvenile detention matters in two days. At least 382 were ordered detained with most being released before or at the disposition hearings held during the week of September 13, 1965. As of October 25, 1965, there were some juveniles still being held. The report does not indicate whether any juveniles were released on bail or were provided legal counsel. *Riot Participant Study: Juvenile Offenders,* Research Report No. 26, Los Angeles County Probation Department, November 1965, p. 31.

CONCLUSION

This action presents more than the question of the rights of the individual petitioners, important as those rights may be. It presents a crucial element of the relation between the state and those who because of poverty and neglect have been excluded from society, who have despaired of proceeding through lawful process, but who have now become caught up in the machinery of the law, the enforcer of the standards of that society. One commentator said, after the riots in Watts had ended:

> Politicians, psychologists, educators, civil rights leaders and hosts of others joined the sociologists in pondering the causes. They nearly all came up with the same answer: the frustration and utter hopelessness of the ghetto-locked Negro. Mozer, "There's No Easy Place to Pin the Blame," *Life*, vol. 59, No. 9, Aug. 27, 1965, pp. 31-33.[7]

The question here is whether a clearly established legal right will be applied in the only way it can be meaningful, or whether California and its courts will continue to sweep this issue under the rug.

---

[7] For other comments on the causes of the Watts riots, see, e.g., "No Panacea," *The Christian Century*, Vol. LXXXII, No. 34, Aug. 25, 1965, pp. 1027, 1028; "Los Angeles: And Now What?", *America*, Vol. 113, No. 9, Aug. 28, 1965, p. 199.

WHEREFORE, for the foregoing reasons, petitioners pray that the writ of certiorari be granted.

Respectfully submitted,

JACK GREENBERG
LEROY D. CLARK
CHARLES STEPHEN RALSTON
10 Columbus Circle
New York, New York 10019

RAYMOND C. JOHNSON
4840 W. Washington Blvd.
Los Angeles, California

HERMAN R. SMITH
600 East 103rd Street
Los Angeles, California

ANTHONY G. AMSTERDAM
3400 Chestnut Street
Philadelphia, Pennsylvania

Attorneys for Petitioner

APPENDIX A

IN THE

SUPREME COURT OF CALIFORNIA

No. .....

DORIS WATKINS, LARRY D. ROBINSON, JANELLE HYLTON, and CLARENCE L. PROCTOR,

Petitioners,

—VS.—

THE SUPERIOR COURT, LOS ANGELES COUNTY, CALIFORNIA, and J. Howard Ziemann, Joseph L. Call, Fred P. Perraga, John G. Barnes, Vernon Spencer, Mark Brandler, Robert Clifton, Bernard Lawler, Joseph A. Wapner, Raymond Roberts, Bernard S. Selber, Richard S. C. Hayden, Edward C. Olson, Kathleen Parker, Mario L. Clinco, Joseph Sprankle, Jr., and Robert Feinerman as Judges,

THE MUNICIPAL COURT OF LOS ANGELES, CALIFORNIA, and Maurice T. Leader, Irwin J. Nebron and Philip M. Saeta as Judges

THE JUVENILE COURT OF LOS ANGELES COUNTY, CALIFORNIA, and William E. MacSaden as Judge.

Petition for Writ of Prohibition and Mandamus

To: The above-named Respondents as Judges of the Superior Court of Los Angeles County, California, and the Municipal Court of the City of Los Angeles, California and Juvenile Court, Los Angeles County, California. Now

come the Petitioners named herein and petition this Honorable Court for the issuance of a Writ of Prohibition and Mandamus directed to the Respondents for the causes and on the grounds named herein as follows:

1. Petitioners Doris Watkins, Larry D. Robinson, Janelle Hylton, and Clarence L. Proctor, are all Negro citizens of Los Angeles County, California, who were arrested and charged with crimes for participation in rioting occurring in Los Angeles County, California, between August 11 and August 20, 1965. Petitioners have had bail set in their initial arraignment, have completed their preliminary hearings, and have been given a date for trial. Petitioner Clarence L. Proctor is presently in custody in the Hall of Justice in Los Angeles, California. All other Petitioners are released on bail or on their own recognizance. Petitioners are indigent and unable to pay for the services of private counsel.

2. The Respondents are J. Howard Ziemann, Joseph L. Call, Fred P. Perraga, John G. Barnes, Vernon Spencer, Mark Brandler, Robert Clifton, Bernard Lawler, Joseph A. Wapner, Raymond Roberts, Bernard S. Selber, Richard S. Hayden, Edward C. Olson, Kathleen Parker, Mario L. Clinco, Joseph Spankle, Jr. and Robert Feinerman, Judges of the Superior Court, Los Angeles County, California; Maurice T. Leader, Irwin J. Nebron and Philip M. Saeta, Judges of the Municipal Court of the City of Los Angeles, California and William E. MacSaden, Judge of the Juvenile Court, Los Angeles County, California. Respondents Ziemann, Call, Perraga, Barnes, Spencer, Brandler, Clifton, Lawler, Wapner, Roberts, Selber, Hayden, Olson, Parker, Clinco, Spankle, and Feinerman are vested with

jurisdiction to conduct preliminary hearings, arraignment for pleas and trials of petitioners and other defendants charged with felony violations. Respondents Leader, Nebron, and Saeta have the authority to inform Petitioners and other defendants appearing in the Municipal Court of the charges placed against them, to set bail pending a preliminary hearing and to preside at the trials of defendants charged with misdemeanors. Respondent MacSaden conducts proceedings in the Juvenile Court for minors charged with misdemeanors and felonies. All of the said Respondents have the authority and duty to inform defendants of their right to counsel and to secure immediate appointment of counsel to indigent defendants who are financially unable to secure representation.

3. Respondents have failed to secure adequate legal representation for the indigent Petitioners in the following particulars:

(a) Respondent Judges of the Municipal Court failed to appoint private counsel or a public defender to represent Petitioners at the initial arraignment, and made no inquiry as to Petitioners' financial ability to retain counsel for this proceeding. Petitioners were given no time to secure counsel for said arraignments and were prejudiced thereby when Respondents set bail in the Municipal Court at two to three times the amount ordinarily set for defendants with like charges. Bail was set at excessive and discriminatory levels to insure Petitioners continued incarceration, thereby assuming the guilt of all Petitioners, prior to proof of the charges against them. The Petitioners, being without Counsel in said arraignments, were unable to

challenge the violations of their constitutional and statutory rights.

The facts of this allegation are supported by affidavits of Petitioners Watkins, Hylton, and Proctor, attached hereto.

(b) All of the said Respondents have failed and refused to appoint private counsel not associated with the Public Defender's office although the legal and investigative staff of the Public Defender's office has not been expanded sufficiently to give adequate time for preparation and investigation to defend Petitioners. Petitioners have had necessarily brief and cursory consultation with the public defenders in the pre-trial proceedings. (See affidavits of Petitioners Watkins, Hylton, and Proctor.) Neither of the Petitioners have been continuously represented by one public defender through the successive proceedings, resulting in each public defender having to freshly acquaint himself with the case when he receives it. (See affidavit of Petitioners Watkins, Hylton, and Proctor.) The Public Defender has never been required to handle the cases of over 4,000 defendants with multiple charges during a six-week period, such as occurred after the riots began. In September, 1965 the County Public Defender's Office disbanded and the authority of the County office was expanded to include misdemeanors as well as felonies. The County office absorbed the bulk of the City Staff, but the consolidation has not affected the total legal staff available to service the caseload. Private Counsel, associated with groups such as the National Association for the Advancement of Colored People, the American Civil Liberties Union, and the

United Civil Rights Committee have represented indigent persons without compensation. They have received more requests for representation from persons presently by the Public Defender's Office. (See affidavit of Petitioner Proctor.)

The above-named groups and the Los Angeles County Bar Association have furnished the Respondents with lists of attorneys who are willing to accept court appointment to represent indigent persons arrested in the riots. The Respondents have failed to make appointments of private counsel from these lists in sufficient numbers to relieve the overextended caseload of the Public Defender's Office, and have limited the appointment of private counsel to instances where there would be a conflict of interest for the Public Defender to represent the defendant. (See affidavit of Petitioner Robinson.)

4. Petitioners bring this suit as a class action on their behalf and on behalf of all other Negro persons in Los Angeles County arrested since August 11, 1965 for participation in rioting, who are similarly affected by the denial of adequate legal counsel. Petitioners allege on information and belief that over 4,000 persons have been charged with misdemeanors and felonies in circumstances similar to their own. The members of the class are so numerous as to make it impracticable to bring them all individually before this Court; there being common questions of law and fact involved, and common grievances arising out of common wrongs, and common relief is sought. The Petitioners fairly and adequately represent the interest of their class.

5. The Respondents lack jurisdiction to continue criminal or juvenile proceedings where indigent persons are denied legal counsel.

6. The members of Petitioners' class have no plain, adequate, and speedy remedy by appeal or in any other manner to secure adequate representation by counsel prior to trial. Public defenders representing indigent persons in Petitioners' class have not raised the objection that these parties are being denied counsel, and therefore criminal trials and juvenile proceedings are being conducted in which the deprivation of constitutional and statutory rights will not be raised. The members of the Petitioners' class are threatened with irreparable injury in that they face prosecution with the defense of private counsel who are uncompensated and without funds to make investigation, or are represented by the Public Defender's Office which is overextended. Unless this Court restrains the Respondents and orders the protection prayed for herein, Petitioners and members of the class will be tried in proceedings totally in violation of their constitutional and statutory rights, and deprived of equal protection of the laws in violation of the Fourteenth Amendment.

7. Petitioners file their application for Writ of Prohibition and Mandamus in this Court in the first instance because three of the Petitioners are to be tried in October, 1965, with Petitioner Robinson's trial to begin October 15, 1965. Petitioners allege on information and belief that the trials of other members of the class are in progress or will be conducted during the second week of October, 1965. Petitioners' application for Writ of Prohibition and Mandamus is of grave public importance, as it raises funda-

mental questions of the constitutionality and authority of the Respondents to proceed with criminal prosecutions of over 4,000 defendants.

WHEREFORE, your Petitioners pray that an alternative Writ of Prohibition and Mandamus issue out of and under the seal of this Honorable Court directed to the Respondents above named commanding them to:

1) Appoint counsel with adequate preparation, investigation and counseling before conducting any further proceedings;

2) Nullify any prior proceedings in which Petitioners or members of their class, after securing adequate counsel, can demonstrate they were prejudiced by the lack of counsel;

3) Furnish the members of Petitioners' class with lists of private counsel, if the Public Defender's Office is found to have an inordinate caseload, and to provide compensation for such counsel as are chosen by the indigent defendants.

In the alternative Petitioners pray that the Respondents be made to show cause before this Court, at a time and place to be fixed, why they should not be restrained and enjoined from taking any further proceedings in the causes mentioned herein, and for such other, further and additional relief as to the Court may seem just and proper in the premises.

STATE OF CALIFORNIA,
COUNTY OF LOS ANGELES, *ss.*:

Doris Watkins, Janelle Hylton, Larry D. Robinson, and Clarence L. Proctor, being duly sworn, say: that they are the Petitioners in the above-entitled action; that they have read the foregoing petition for Writ of Prohibition and Mandamus, and know the contents thereof; that the facts alleged in the writs are true of their own knowledge, and all other matters stated in the writs are alleged on information or belief, and as to those matters they believe them to be true.

LARRY DIKE ROBINSON
Petitioner

MRS. JANELLE HYLTON
Petitioner

MRS. DORRIS WATKINS
Petitioner

Subscribed and sworn to before me this
6th day of October, 1965.

SID E. CAMPBELL
Notary Public
My Commission Expires May 26, 1967

CLARENCE PROCTOR
Petitioner

Subscribed and sworn to before me this
7th day of October, 1965.

ROBERT A. WARD, JR.
Notary Public
My Commission Expires July 11, 1967

RAYMOND L. JOHNSON
4840 W. Washington Blvd.
Los Angeles, California

HERMAN T. SMITH
600 E. 103rd Street
Los Angeles, California

JACK GREENBERG
LEROY D. CLARK
10 Columbus Circle
New York, New York

Attorneys for Petitioners

Affidavits

STATE OF CALIFORNIA,
COUNTY OF LOS ANGELES, *ss.*:

I, Janelle Hylton, being duly sworn, deposes and says:

1. I am a Petitioner in the attached application for Writ of Prohibition and Mandamus and make these statements in support thereof.

2. I was arrested on Saturday, August 14, 1965 and was arraigned on Thursday, August 19, 1965. I was not represented by counsel at this arraignment and I was informed that I was charged with burglary, and my bail set at $4500. I was unable to meet the bail of $4500 and remained in jail until my preliminary hearing.

3. I appeared in court on Tuesday, August 24, 1965 for a preliminary hearing. Between my arraignment on Thursday, August 19, 1965, and until I arrived in court on Tuesday, August 24, 1965, I had not been interviewed by anyone from the Public Defender's office. At the preliminary hearing on Tuesday, August 24, 1965 the court appointed a public defender, and he interviewed me concerning my case for approximately five minutes. The court found probable cause for binding me over for trial, and I was released on my own recognizance.

4. On Wednesday, September 8, 1965, I reappeared in court to give my plea. The court assigned a public defender to me who talked with me about ten minutes concerning my financial status and the circumstances of my arrest. This

public defender was not the public defender who appeared with me at the preliminary hearing.

5. On Thursday, September 16, 1965 I reappeared in court and entered a plea of not guilty. The public defender who represented me on this date had not appeared with me at the preliminary hearing, nor was this the public defender whom I had talked with on Wednesday, September 8, 1965.

6. I received a letter from the Public Defender's office stating that Mrs. Florence Mills was assigned to defend me, and I called and have secheduled an appointment for Friday, October 8, 1965. During the entire period after my arrest and release on my own recognizance, no investigator from the Public Defender's office has called me or visited my home to make an investigation of the facts.

7. My trial is secheduled for November 10, 1965.

I, DORIS WATKINS, being duly sworn, deposes and says:

1. I am a Petitioner in the attached application for Writ of Prohibition and Mandamus and make these statements in support thereof.

2. I was arrested on Saturday, August 14, 1965 and taken for arraignment on Tuesday, August 17, 1965. I was informed I was charged with burglary and my bail was set at $4900. I was unable to meet bail. No attorney represented me at this proceeding.

3. I appeared in court on Friday, August 21, 1965 for the preliminary hearing. The court appointed a public de-

fender. He informed me that he didn't know anything about my case and didn't have time to talk to me about it. He said that he only wanted information in order to secure a reduction in my bail. He inquired only as to my name, my address, number of my children, and if I had any prior convictions. The court found probable cause for holding me for trial and bail was reduced to $250. I secured my release under this bail.

4. I reappeared in court on Monday, September 13, 1965, and entered a plea of not guilty. The public defender who appeared on my behalf had not represented me in any prior hearing.

5. A trial date was set for Monday, October 25, 1965.

6. I received a letter from the Public Defender's office and arranged an interview with a public defender on Wednesday, September 29, 1965. We talked for approximately 25 minutes concerning the circumstances of my arrest.

7. At no time after my arrest or to date has an investigator for the Public Defender's office interviewed me or inquired of me as to the facts of the charges against me.

I, CLARENCE L. PROCTOR, being duly sworn, deposes and says:

1. I am a Petitioner in the attached application for Writ of Prohibition and Mandamus and make these statements in support thereof.

2. I was arrested on Saturday, August 14, 1965 and arraigned on August 18, 1965. At the arraignment I was

informed that I was charged with burglary and bail was set at $4950. I was unrepresented by counsel at this proceeding and no inquiry was made as to my length of residence in the county, prior convictions, or present employment. I was unable to pay the bail for release.

3. I reappeared in court on Friday, August 20, 1965 for a preliminary hearing. The court, at the start of this proceeding, appointed a public defender to represent me. I had had no interview with the public defender or with any investigator from the Public Defender's office prior to the start of this proceeding. The public defender consulted with me approximately two minutes concerning the circumstances of my arrest. The court found probable cause to hold me for trial. Bail was reduced to $2500. I was unable to meet the reduced bail and presently continue in custody.

4. On Friday, September 3, 1965 a man from the Public Defender's office who was not a public defender, gave me forms to fill out to secure my release on my own recognizance.

6. My trial is set for October 29, 1965. After the preliminary hearing on Friday, August 20, 1965 until Sunday, October 3, 1965, no one from the Public Defender's office interviewed me, although I wrote letters to the Public Defender's office requesting consultation to prepare my defense. When the public defender did visit me on October 3, 1965 he informed me that he had been very busy and was therefore unable to consult with me earlier. We talked for approximately five or six minutes. During the period

prior to October 3, 1965, when I saw no one from the Public Defender's office, I wrote to the N.A.A.C.P. requesting legal assistance.

7. No investigator from the Public Defender's office has visited me to secure facts concerning the charges against me.

I, LARRY D. ROBINSON, being duly sworn, deposes and says:

1. I am a Petitioner in the attached application for Writ of Prohibition and Mandamus and make these statements in support thereof.

2. I was arrested on Thursday, August 12, 1965 and was bailed out Friday, August 13, 1965, bail being set at $250.

3. I was arraigned on Wednesday, August 18, 1965 and was informed that I was charged with the misdemeanor of disturbing the peace. I pleaded not guilty and bail was set at $1000. I was unrepresented in this proceeding.

4. On Saturday, August 21, 1965 I was bailed out again. I reappeared in court on September 7, 1965 for a preliminary hearing. I informed the court I wanted to seek counsel at the N.A.A.C.P. The Judge urged me, even after I made known my desire to seek representation by the N.A.A.C.P., to accept the representation of the Public Defender's office. I refused the appointment of the public defender.

5. I have made contact with private counsel of the N.A.A.C.P. and desire their representation. I am not able to pay private counsel.

6. My trial is scheduled for October 15, 1965.

IN THE

DISTRICT COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT DIVISION TWO
Minutes of Division Two

October 18, 1965

Civil No. 29877

WATKINS, ET AL.

—VS.—

SUPERIOR COURT OF LOS ANGELES COUNTY

The Court: Petition for writ of prohibition and mandate denied.

IN THE

SUPREME COURT OF CALIFORNIA

[Names of parties omitted]

Petition for Hearing

Comes now the petitioners named herein and petition this Honorable Court to grant a hearing for review of the denial by the District Court of Appeals, Second District, of petitioners' writ of prohibition and mandamus. As grounds for such relief, petitioners state the following:

1. Petitioners' writ of prohibition and mandamus, filed in this court on October 8, 1965, was transferred to the District Court of Appeals, Second District, on October 11, 1965.

2. The District Court of Appeals on October 18, 1965 denied the petition for writ of prohibition and mandamus, without opinion. A copy of the order of the court is attached hereto.

3. The petitioners are four indigent Negro persons charged with crimes for participating in riots occurring in Los Angeles County, California between August 11 and 20, 1965. The writ of prohibition and mandamus was directed to the Municipal Court of the City of Los Angeles, California, the Superior Court and the Juvenile Court of Los Angeles County, which courts have the responsibility

of conducting adult and juvenile proceedings on charges against all persons arrested in the riots.

4. Petitioners filed the Writ of Prohibition and Mandamus as a class action on behalf of themselves and all other Negro persons arrested in the riots who are being tried before the respondents. The Petition alleged the following facts, which facts are more particularized in a copy of the Writ of Prohibition attached hereto:

a. Petitioners and other indigent defendants were subjected to excessive and discriminatory bail at their initial arraignment and were unrepresented during or prior to this proceeding.

b. Respondents have sought to have the Public Defender's Office carry the burden of representing the bulk of over 4,000 defendants with multiple charges in pre-trial and trial proceedings in which the Public Defender's Office had not had sufficient time or personnel to prepare, consult with the defendant or investigate the charges to conduct an adequate defense. Private associations such as the N.A.A.C.P. have undertaken a portion of the representation of indigent defendants without compensation and have received no funds to conduct adequate investigations. These private associations and the Los Angeles County Bar Association have furnished the respondents with lists of attorneys willing to accept court appointments to represent the members of petitioners' class, but respondents failed to make use of this source of representation in sufficient numbers to relieve the overextended case load of the Public Defender's Office.

c. Minors have been tried in Juvenile Court without adequate counsel from the Public Defender's Office, or without representation by any attorney.

5. The Petition for Writ of Prohibition and Mandamus asserts that the respondents have failed to secure adequate legal representation for petitioners and other indigent defendants in violation of the equal protection and due process clauses of the Fourteenth Amendment to the United States Constitution, Article I, Section 2 of the California Constitution and state statutes governing appointment of counsel. In particular, respondents have violated petitioners' rights in the following manner:

a. The Juvenile Court has failed to appoint counsel for every indigent juvenile who is charged with the commission of a misdemeanor or felony.

b. The Municipal Court, and judges from the Superior Court sitting as Municipal judges, failed to secure indigent persons counsel prior to the arraignment held immediately after their arrest.

c. Petitioners and members of their class have not been accorded a right to counsel equal to that accorded to indigent defendants arrested and tried prior to the riots of August 11, 1965.

d. Appointment of the public defender was inadequate as there was insufficient time for consultation and investigation to conduct a proper defense.

e. Respondents failed to appoint private counsel although the Public Defender's Office was not staffed to service the inordinate number of criminal cases arising over a two to three-week period.

f. Respondents failed to accord indigent defendants court-appointed counsel of their own choosing where such defendants did not wish to be represented by the public defender.

6. Writ of Mandamus will lie since respondents have failed to perform the duty enjoined upon them by law to appoint adequate counsel to petitioners and other indigent defendants. Writ of prohibition will lie since respondents lack jurisdiction to conduct juvenile or criminal proceedings without acquiring adequate legal representation for persons unable to afford private counsel.

7. Petitioners request a hearing to settle serious questions of law concerning the nature and scope of the rights of over 4,000 indigent defendants to adequate legal representation.

Respectfully submitted,

RAYMOND L. JOHNSON
4840 West Washington Blvd.
Los Angeles, California

HERMAN T. SMITH
600 East 103rd Street
Los Angeles, California

JACK GREENBERG
LEROY D. CLARK
CHARLES STEPHEN RALSTON
10 Columbus Circle
New York, New York

Attorneys for Petitioners

Order Due
November 17, 1965

Order Denying Hearing

AFTER JUDGMENT BY DISTRICT COURT OF APPEAL
2nd District, Division 2, Civil No. 29877

IN THE
SUPREME COURT
OF THE STATE OF CALIFORNIA
IN BANK

WATKINS

—v.—

SUPERIOR COURT OF THE COUNTY OF LOS ANGELES

..... petition for hearing DENIED.

FILED Nov 3—1965

TRAYNOR, *Chief Justice*

APPENDIX B

California Statutes Involved

Calif. Penal Code §858:

> *Informing Accused of Nature of Charge and Right to Counsel.*—When the defendant is brought before the magistrate upon an arrest, either with or without warrant, on a charge of having committed a public offense, the magistrate must immediately inform him of the charge against him, and of his right to the aid of counsel in every stage of the proceedings. If it appears that the defendant may be a minor, the magistrate shall ascertain whether such is the case, and if the magistrate concludes that it is probable that the defendant is a minor, . . . he shall immediately either notify the parent or guardian of the minor, by telephone or messenger, of the arrest, or appoint counsel to represent the minor.

Calif. Penal Code §859:

> *Time to Procure Counsel.*—When the defendant is charged with the commission of a public offense, over which the superior court has original jurisdiction, by a written complaint subscribed under oath and on file in a court within the county in which the public offense is triable, he shall, without unnecessary delay, be taken before a magistrate of the court in which such complaint is on file. The magistrate shall immediately deliver to him a copy of the complaint, inform him of his right to the aid of counsel, ask him if he desires the

aid of counsel, and allow him a reasonable time to send for counsel; and the magistrate must, upon the request of the defendant, require a peace officer to take a message to any counsel whom the defendant may name, in the judicial district in which the court is situated. The officer must, without delay and without fee, perform that duty. If the defendant desires and is unable to employ counsel, the court must assign counsel to defend him. If it appears that the defendant may be a minor, the magistrate shall ascertain whether such is the case, and if the magistrate concludes that it is probable that the defendant is a minor, he shall immediately either notify the parent or guardian of the minor, by telephone or messenger, of the arrest, or appoint counsel to represent the minor.

Calif. Penal Code §859a:

Felony Plea Before Magistrate. If the public offense charged is a felony not punishable with death, the magistrate shall immediately upon the appearance of counsel for the defendant read the complaint to the defendant and ask him whether he pleads guilty or not guilty to the offense charged therein and to a previous conviction or convictions of crime if charged; thereupon, or at any time thereafter, while the charge remains pending before the magistrate and when his counsel is present, the defendant may, with the consent of the magistrate, and the district attorney or other counsel for the people, plead guilty to the offense charged or to any other offense the commission of which is necessarily included in that with which he is charged, or to an attempt to commit the offense charged

and to the previous conviction or convictions of crime if charged; and upon such plea of guilty, the magistrate may then fix a reasonable bail as provided by this code, and upon failure to deposit such bail or surety, shall immediately commit the defendant to the sheriff and certify the case, including a copy of all proceedings therein and such testimony as in his discretion he may require to be taken, to the superior court, and thereupon such proceedings shall be had as if such defendant had pleaded guilty in such court. The foregoing provisions of this section shall not be construed to authorize the receiving of a plea of guilty from any defendant not represented by counsel. . . .

Calif. Penal Code §987:

Defendant, on Arraignment to Be Informed of His Right to Counsel, When Court to Assign Counsel. If the defendant appears for arraignment without counsel, he must be informed by the court that it is his right to have counsel before being arraigned, and must be asked if he desires the aid of counsel. If he desires and is unable to employ counsel, the court must assign counsel to defend him.

Calif. Penal Code §987a:

Compensation of Counsel by County. In any case in which counsel is assigned in the superior court to defend a person, including a person who is a minor, who is charged therein with the commission of a crime, or is assigned in a municipal or justice's court, or justice court as established pursuant to the Municipal and Justice Court Act of 1949, to represent such a

person on a preliminary examination in such a court and who desires but who is unable to employ counsel, such counsel, in a county, or city and county, in which there is no public defender, or in a case in which the court finds that because of conflict of interest or other reasons the public defender has properly refused to represent the person accused, shall receive a reasonable sum for compensation and for necessary expenses, the amount of which shall be determined by the court in accordance with this section, to be paid out of the general fund of the county.

* * * * *

Counsel shall be appointed to represent, in the municipal or justice court, a person who desires but is unable to employ counsel, when it appears that such appointment is necessary to provide an adequate and effective defense for defendant.

California Code of Civil Procedure §1084:

Defined.—The writ of mandamus may be denominated the writ of mandate.

California Code of Civil Procedure §1085:

Power to Issue—Municipal Court.—It may be issued by any court, except a municipal or justice court, to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station; or to compel the admission of a party to the use and enjoyment of a right or office to which he is entitled, and from which he is unlawfully precluded by such inferior tribunal, corporation, board, or person.

California Code of Civil Procedure §1086:

> *Duty to Issue Mandatory.*—The writ must be issued in all cases where there is not a plain, speedy, and adequate remedy, in the ordinary course of law. It must be issued upon the verified petition of the party beneficially interested.

California Code of Civil Procedure §1102:

> *Nature and Effect of Writ.*—The writ of prohibition is the counterpart of the writ of mandate. The writ of prohibition arrests the proceedings of any tribunal, corporation, board, or person exercising judicial functions, when such proceedings are without or in excess of the jurisdiction of such tribunal, corporation, board or person.

California Code of Civil Procedure §1103:

> *Power to Issue—Municipal Court.*—It may be issued by any court, except municipal or justice courts, to an inferior tribunal or to a corporation, board, or person, in all cases where there is not a plain, speedy, and adequate remedy in the ordinary course of law. It is issued upon the verified petition of the person beneficially interested.

SUBJECT INDEX

I. Page

No federal question was presented to the courts of the State of California 2

II.

Petitioners have failed to exhaust presently available remedies 3

III.

Treatment of the petition as a group action would infringe the rights of individuals who have not petitioned the court for any relief 4

IV.

There is no showing of inadequacy of counsel 4

V.

Amount of time spent advising clients, and change of attorneys must be related to the individual case 5

VI.

An extreme case of inadequacy of counsel must be shown to show a violation of constitutional rights 6

Appendix A. Declaration of Paul G. Breckenridge, Jr. 1

Appendix B. Affidavit 10

TABLE OF AUTHORITIES CITED

Cases	Page
Bell, In re, 19 Cal. 2d 488, 122 P. 2d 22	3
Joiner, In re, 180 Cal. App. 2d 250, 4 Cal. Rptr. 667	3
McGonagill v. Superior Court, 214 Cal. App. 2d 192, 29 Cal. Rptr. 485	4
People v. Carreras, 216 Cal. App. 2d 807, 31 Cal. Rptr. 436	6
People v. Moten, 207 Cal. App. 2d 692, 24 Cal. Rptr. 716	6
Shaffer v. Justice Court, 185 Cal. App. 2d 405, 8 Cal. Rptr. 269	3

Statute	
California Penal Code, Sec. 995	2, 3

IN THE

Supreme Court of the United States

October Term 1965
No. 784

DORIS WATKINS, LARRY D. ROBINSON, JANELLE HYLTON, and CLARENCE L. PROCTOR,

Petitioners,

vs.

THE SUPERIOR COURT, LOS ANGELES COUNTY CALIFORNIA, and J. HOWARD ZIEMANN, JOSEPH L. CALL, ALFRED P. PERACCA, JOHN G. BARNES, VERNON SPENCER, MARK BRANDLER, ROBERT CLIFTON, BERNARD LAWLER, JOSEPH A. WAPNER, RAYMOND ROBERTS, BERNARD S. SELBER, RICHARD F. C. HAYDEN, EDWARD C. OLSON, KATHLEEN PARKER, MARIO L. CLINCO, JOSEPH SPRANKLE, JR., and ROBERT FEINERMAN as Judges,

THE MUNICIPAL COURT, LOS ANGELES COUNTY, CALIFORNIA, and MAURICE T. LEADER, IRWIN J. NEBRON and PHILIP M. SAETA as Judges,

THE JUVENILE COURT OF LOS ANGELES COUNTY, CALIFORNIA, and WILLIAM E. MacFADEN as Judge.

OPPOSITION TO WRIT OF CERTIORARI.

Comes Now the respondents The Superior Court of the State of California, for the County of Los Angeles (including the Juvenile Court thereof) and The Municipal Court of the Los Angeles Judicial District, together with the judges of said courts named in the within petition, and the People of California the real party in interest, and by way of opposition to the issuance of a writ of certiorari in this matter set forth as follows:

I.

No Federal Question Was Presented to the Courts of the State of California.

The record as to each petitioner in the trial court (Superior Court) indicates clearly that no motion to relieve the Public Defender was made in that court. Further, the record is clear that the Superior Court was not informed that any petitioner believed himself to be inadequately represented and even at the present time the trial court has not been given an opportunity to rule on this claim.

California law provides an orderly and adequate procedure by which claims of inadequate counsel may be tested. Section 995 of the Penal Code provides as follows:

> "[*When indictment or information must be set aside.*] The indictment or information must be set aside by the court in which the defendant is arraigned, upon his motion, in either of the following cases:
>
> If it be an indictment:
>
> 1. Where it is not found, endorsed, and presented as prescribed in this code.
>
> 2. That the defendant has been indicted without reasonable or probable cause.
>
> If it be an information:
>
> 1. That before the filing thereof the defendant had not been legally committed by a magistrate.
>
> 2. That the defendant had been committed without reasonable or probable cause."

The propriety of a denial of such a motion may thereafter be tested by a petition for a writ of prohibition. The motion which is authorized by Section 995 of the Penal Code was not made on behalf of any of these petitioners. Since the question of inadequacy of counsel was not before the trial court, the California Appellate Courts properly denied the purported Petition for Prohibition and Mandate which was presented to them. Until the trial court has acted upon an issue there is nothing for the higher court to prohibit. (*Shaffer v. Justice Court* (1960), 185 Cal. App. 2d 405, 8 Cal. Rptr. 269; *In re Bell* (1942), 19 Cal. 2d 488, 122 P. 2d 22.) Under these circumstances, no federal issue has been properly raised in any court of the State of California.

II.

Petitioners Have Failed to Exhaust Presently Available Remedies.

Any claim which petitioners wish to raise relative to their cases should be made first in the trial court, then be reviewed by the District Court of Appeal on prohibition. However, where petitioners' counsel failed to follow the statutory procedures as outlined above, the California Appellate Courts still permit a remedy. Thus, in the matter of *In re Joiner* (1959), 180 Cal. App. 2d 250, 4 Cal. Rptr. 667, prohibition was not available since there was a failure to file a petition within the statutory fifteen day period after the denial of a motion in the trial court. Consequently, that petitioner sought habeas corpus and appropriate relief was granted. The remedy of habeas corpus is still available to petitioners in California. Since inadequacy of counsel would result in the defendant not being

lawfully committed, there would be no time limit upon another petition for prohibition after a denial in the superior court. (See *McGonagill v. Superior Court,* (1963), 214 Cal. App. 2d 192, 29 Cal. Rptr. 485.) Further, as to any petitioner who has been convicted, there is a further state remedy by appeal. It would not appear that any of the instant four cases would acquire any greater degree of mootness by using these presently available state remedies.

III.

Treatment of the Petition as a Group Action Would Infringe the Rights of Individuals Who Have Not Petitioned the Court for Any Relief.

Since the great majority of riot cases have been concluded some defendants have been acquitted and some have been convicted of lesser offenses and have already served short jail sentences. While there might possibly be some propriety in setting aside proceedings in the petitioners' case and subjecting them to a new trial, we submit that this result should not be inflicted upon other individuals of the alleged class.

IV.

There Is No Showing of Inadequacy of Counsel.

It is further submitted that on the merits a writ should not issue since the limited record before the court does not establish any basis for relief.

Interestingly enough, the facts, even as to the four individual petitioners here, disclose no inadequacy of counsel. Two of them were acquitted. (Footnote, p. 6.)

One (Watkins) had her bail reduced from $4,900.00 to $250.00, and although originally charged with burglary, a felony, was convicted of mere trespass, a misdemeanor. The other defendant (Proctor) had his bail reduced from $4,750.00 to $2,500.00, and although originally charged with burglary, a felony, was convicted of mere trespass, a misdemeanor. (Petition, pp. 4-6.) Such a record is inconsistent with the claim of inadequate counsel.

As to the members of the class whom petitioners claim to represent, there are *no* affidavits of fact as to them. In the absence of such facts, respondents submit that the broad generalizations of the petition as to inadequacy of counsel must be ignored.

V.

Amount of Time Spent Advising Clients, and Change of Attorneys Must Be Related to the Individual Case.

Petitioners contend that because very little time was spent with each defendant that, therefore, defendants were inadequately represented. Respondents believe this court may take judicial notice of the fact that some cases are more complicated than others, and that the amount of time spent depends not only upon the complexity of the case but also on the familiarity of the attorney with the phase of law involved. In the instant cases the facts of the alleged crime were simple, and the familiarity of the Public Defender's Office with defense of persons accused of crime is apparent. (See affidavits contained in Appendices A and B.)

It may also be noted that a criminal proceeding in California is readily divisible into arraignment and plea, preliminary hearing, and trial, and that the use of attoneys specializing in each phase actually is advantageous to a defendant rather than prejudicial to him. The California courts have held that the mere fact that a different deputy public defender represents a defendant at an arraignment than at the trial does not constitute prejudicial error. *People v. Carreras* (1963), 216 Cal. App. 2d 807, 810, 31 Cal. Rptr. 436.

VI.

An Extreme Case of Inadequacy of Counsel Must Be Shown to Show a Violation of Constitutional Rights.

In responding to the issue of inadequacy of counsel, the District Court of Appeal in *People v. Moten* (1962), 207 Cal. App. 2d 692, 24 Cal. Rptr. 716, had the following to say, at 207 Cal. App. 2d 696-697:

> "Defendant contends that he was not adequately represented at the trial and that his attorney failed to introduce defense witnesses as requested by defendant and failed thoroughly to inquire into the credibility of the witnesses against him. In *People v. Monk,* 56 Cal. 2d 288 [14 Cal. Rptr. 633, 363 P. 2d 865], the same contentions were made. The court stated at pages 299-300: 'He further asserts that the public defender refused to examine the court-appointed psychiatrists, to call witnesses the defendant requested, and to bring defendant transcripts of the court proceedings. The psychiatrists were not called as witnesses, but reports by them

were introduced into evidence. Whether they should have been called and examined in court was a matter within the discretion of counsel. Defendant does not state the names of the additional witnesses whom he wished to call nor does he indicate what the nature of their testimony would have been. Therefore there is no basis for assuming that defense counsel did not exercise proper judgment in not calling additional witnesses. . . . Moreover, even if there had been any incompetency on the part of defense counsel, it is questionable whether defendant in the instant case could complain on appeal. A defendant may complain at any time during the trial that his counsel is not adequately representing him thereby affording the trial court an opportunity to correct the situation, but if a defendant fails to avail himself of this privilege at the trial level, he cannot ordinarily after an adverse judgment, first complain of the matter on appeal. . . . Under these circumstances we are not impressed that defendant's right to a fair trial was violated.'

"Further it appears from the record that counsel carefully brought to light, through cross-examination, many circumstances which tended to show bias on the part of prosecution witnesses, and motives which might induce them to prevaricate. 'We do not find that counsel's representation of appellant was of "such a low order as to render the trial a face and mockery of justice" as contended by appellant, nor that the situation is comparable to *People v. Davis,* 48 Cal.2d 241 [309 P.2d 1] upon which he relies. It is stated in *People v. Dupree,* 156 Cal.App.2d 60, 69 [319 P.2d 39]:

"Before it can be held that an accused's representation by counsel was inadequate to the degree that it violated his right to representation under the Fourteenth Amendment to the Constitution of the United States, an extreme case must be disclosed. The representation must be of such a low order as to render the trial a farce and a mockery of justice (*Diggs v. Welch,* 148 F.2d 667, 669 [80 U.S.App.D.C.5]), or it must be shown that the essential integrity of the proceeding as a trial was destroyed by the incompetency of counsel (*United States* ex rel. *Weber v. Ragan,* 176 F.2d 579, 586) . . . While the opportunity to try his former lawyer has its undoubted attraction to a disappointed prisoner, the courts are uniform in holding that the claimed absence of effective representation will not be sustained unless the circumstances surrounding the trial indicate a representation so lacking in competence that it becomes the duty of the court to observe and to correct it.'" (*People v. Prado,* 190 Cal.App.2d 374, 377 [12 Cal.Rptr. 141].) See also *People v. Robillard,* 55 Cal.2d 88, 97 [10 Cal.Rptr. 167, 358 P.2d 295]; *People v. Wein,* 50 Cal.2d 383, 410 [326 P.2d 457]. It appears from the record that counsel competently handled the trial of the case."

There is no claim in this case that attorneys were not appointed, or that the attorneys in the Public Defender's Office did not accept the appointment and carry out their functions. The only complaint is that in the case of four defendants, whose cases are now moot, the Public Defender did not spend as much time with the defendants as the latter apparently wished.

Respondents assert that this does not constitute cause for certiorari to issue from the highest court of the land.

Respectfully submitted,

HAROLD W. KENNEDY,
County Counsel,

GEORGE W. WAKEFIELD,
Chief Assistant County Counsel,

DONALD K. BYRNE,
Deputy County Counsel,

Attorneys for Respondents, The Superior Court of the State of California for the County of Los Angeles (including the Juvenile Court thereof) and The Municipal Court of the Los Angeles Judicial District.

THOMAS C. LYNCH,
Attorney General of California,

WILLIAM E. JAMES,
Assistant Attorney General,

EVELLE J. YOUNGER,
District Attorney,

HARRY WOOD,
Chief, Appellate Division,

Attorneys for Real Party In Interest.

APPENDIX A.

Declaration of Paul G. Breckenridge, Jr.

State of California, County of Los Angeles—ss.

Paul G. Breckenridge, Jr. declares as follows:

That he is the Chief Trial Deputy, Los Angeles County Public Defender's Office; that he is a graduate of Stanford University and School of Law; that he was admitted to the California Bar in January 1953; that on August 10, 1953 he was appointed a Deputy Public Defender for Los Angeles County; and in December 1964 appointed to his present position; that as a deputy he participated in the defense of several thousand felony cases, at all stages of the proceedings, preliminary hearings, arraignments and pleas in Superior Court and eight and a half years continuously devoted to the trial of felony cases in Superior Court.

That the legal staff of the Public Defender's Office as of the beginning of the fiscal year, July 1, 1965, consisted of seventy-six (76) deputies. Of this number, eighteen (18) were assigned to branch offices, three (3) to the Civil Division, five (5) to the Psychiatric and Juvenile Courts, one (1) to Appeals, four (4) to the Master Calendar Criminal Court, three (3) to Administration and twelve (12) to Preliminary Hearings throughout the City and County; the remaining thirty (30) deputies were assigned to felony trials in the eighteen (18) Superior Court Departments in the downtown Los Angeles area, handling criminal trials.

That the jurisdiction of the office was expanded by the State Legislation effective September 17, 1965, to include misdemeanor representation. Consequently, forty-four (44) additional legal positions were authorized

thirty (30) effective August 1, 1965 and fourteen (14) effective September 17, 1965. The latter came about by reason of the absorption by the County of the personnel and duties of what had been the Los Angeles City Public Defender's Office. These additional positions did not alter the number of personnel assigned to felony trials; through August 30, 1965, ten (10) additional deputies had been employed, bringing the legal staff to eighty-six (86) deputies.

On Sunday, August 15, 1965, declarant received information from Chief Deputy District Attorney Ackerman that many persons had been arrested in connection with the Watts riots and that possibly fifteen hundred (1500) felony cases would be filed; that arraignments on felony cases would begin in Division 40 A of the Los Angeles Judicial District on August 16, 1965, and that Preliminary Hearings would be set in Department 100 of the Superior Court beginning at 1:00 p.m. on August 19, 1965. It was further anticipated that the regular Superior Court trial Judges would recess trial matters at noon in their respective courts and reconvene in the afternoons as committing Magistrates hearing Preliminary Hearings.

Beginning Monday, August 16, 1965, four (4) deputies were assigned to cover felony arraignments in the special Court 40 A, under the leadership of deputy T. Harunaga. An affidavit of T. Harunaga is attached hereto and specifically incorporated herein. Four (4) Deputy Public Defenders continued to represent defendants for purposes of arraignment in Division 40 A so long as it constituted the arraignment court.

The first preliminary hearings were scheduled August 19, 1965.

Inasmuch as the Superior Court trial departments were being utilized for this purpose, the Public Defender trial deputies were assigned to their respective departments to cover Preliminary Hearings. In addition, the ten (10) deputies hired during August were also available. It should be noted that approximately five (5) trial deputies were on vacation each week during the summer months). Regularly assigned Preliminary Hearing deputies, not otherwise involved, also assisted in the defense at the Preliminary Hearing level. In many courts, it was possible to assign two (2) deputies, so that one could interview while the other was conducting the preliminary. Most of the charges of burglary were simple factually and legally, and any experienced criminal defense lawyer would have had no difficulty in representing adequately each defendant following a relatively brief interview. Many lawyers appeared and volunteered to defend Watts defendants free of charge, on the first two or three days of Preliminary Hearings, but as time went on, fewer appeared and the Public Defender represented more and more. In many of these cases, the Deputy Public Defender was successful in having charges dismissed, in getting bail reduced substantially and securing the release of other defendants on their own recognizance. Declarant was personally congratulated by two lawyer-members of the A.C.L.U. on the very able and efficient manner in which the Public Defender conducted the defense of these Preliminary Hearings.

It should be pointed out that the felony procedure in California readily submits itself to a division of labor. This department with its fifty-one years of experience has regularly assigned deputies by function and

by courtroom. Naturally a defendant would prefer to have the same lawyer represent him at all stages of the proceedings but where a division of labor can be achieved without any diminution in the quality of representation more efficient departmental operation can be achieved. Since a felony case will ordinarily proceed from Preliminary Hearing to arraignment and plea in Department 100 of the Superior Court, and if the defendant pleads Not Guilty, thence to another Department for trial, less experienced deputies in the office are assigned to Preliminary Hearings, four (4) more experienced deputies to Department 100 and thirty (30) of the most experienced deputies to trials, each trial deputy assigned to a particular Department. Since a copy of the Reporter's Transcript of each Preliminary Hearing is given to the defense at the time of arraignment in Department 100, the deputy assigned to that court can adequately advise each defendant regarding his plea, possible bail motions and the motion to dismiss. Consequently each defendant represented by this department will be involved with two or three deputies. If the defendant pleads guilty in the Master Calendar Criminal Department, he will be represented at sentence by the same lawyer who represented him when he pleaded guilty. If he pleads Not Guilty, then his case is assigned for trial to a third deputy, who will thereafter have the responsibility of representing the defendant at all further proceedings. The normal case load of each trial deputy is four felony cases per week, set one a day, having one day for interviews. The week prior to the outbreak of the riot, Public Defender felony trials were being set approximately forty-two to forty-five days following the plea of Not Guilty. The first arraignments in Superior Court began

September 2, 1965 at 1:00 p.m. A Deputy Public Defender was present and appointed as attorney for many defendants. The defendants were arraigned, the transcripts were given to the Public Defender and the cases continued for plea to a later date. All clients on bail were escorted down to the Public Defender's Office and each defendant was interviewed by an experienced trial lawyer and his transcript evaluated in light of whether a motion for dismissal for insufficient evidence should be made. Inasmuch as it was obvious that time for interviews at this stage would be limited and the interviewing deputy would not be in court with the client, it was the policy of the department not to permit any defendant to plead guilty in Department 100. In every case but one, either a motion to dismiss was made or the defendant pleaded Not Guilty. On all custody cases, defendants were interviewed in jail by experienced deputies, transcripts were analyzed and a motion for reduction of bail was made on behalf of any defendant so requesting. This same procedure was followed on each day that special arraignment calendars were heard in Department 100. Bail defendants were instructed when to return to court and that if no 995 motion to dismiss were made, to plead Not Guilty, that the case would be set for trial, the case assigned to a trial lawyer who would then have ample time to prepare the case for trial and consult with each defendant. Bail defendants were further instructed and given a printed notice to contact the Public Defender's Office within a few days to arrange for an interview with their trial lawyer. In the one case where a defendant pleaded guilty in Department 100, his case came up for arraignment on a regular morning calendar, was inter-

viewed by one of the deputies regularly assigned to Department 100, admitted his guilt and pleaded guilty freely and voluntarily, was represented at sentence by the same deputy, and received a misdemeanor sentence and straight probation.

Upon a defendant's appearance for plea, many bail motions made on behalf of custody clients were granted, some defendants released on their own recognizance and many dismissal motions made.

Time spent with individuals following arraignment and before plea was not extensive but in declarant's opinion adequate. It was anticipated that a trial deputy, having more time and fewer cases would be able to work more extensively with each client assigned to him prior to the eventual trial.

Initially, this department received inquiries from attorneys desiring to volunteer services. Such attorneys were always advised they could take over any case in which a client of ours requested their services. Later, it became apparent that these lawyers were for the most part only interested in taking cases where they could be appointed and receive payment from the County. The Court's only authorization to pay private counsel comes from section 987a of the Penal Code. Only where the Public Defender refuses to represent a defendant for good cause does the court have authority to appoint and pay counsel. It is fundamental that the Public Defender could not justifiably refuse to represent any defendant, absent a conflict of interest, unless the Public Defender believed that his staff could not adequately and competently defend those cases assigned to him. That situation did not, in declarant's judgment, arise; at that time no special records were

kept designating which felony cases arose out of the riots and which did not. A recent survey conducted by the department reflects the following number of riot defendants represented on felony cases by this office.

Defendants for whom the Public Defender was appointed		908
Penal Code section 995 motions to dismiss granted	28	
Plead Guilty in Department 100	1	
Privat Counsel substituted in	112	
Defendants represented throughout all proceedings	767	

Therefore, approximately 767 cases, *i.e.* individual defendants were absorbed. While the results are not all in, it is clear that as a class the defendants fared much better than ordinary criminal defendants represented by the Public Defender.

In order to absorb these extra cases, thirty-four (34) trial lawyers were assigned to trials. Vacations were for most deputies completed. Two of the additional trial deputies were brought in from branch offices. The other two came from the defunct City Public Defender's Office, the former Public Defender and his principal assistant. The time between plea date and trial date extended from 42 to 45 days, to 56 to 58 days. The case load per deputy was increased as follows:

The week of October 18, 1965—6 cases per deputy.
The week of October 25, 1965—7 cases per deputy.
The week of November 1, 1965—7 cases per deputy.
The week of November 8, 1965—6 cases per deputy.
The week of November 15, 1965, the case load returned to normal, *i.e.* 4 cases per deputy.

All cases by California law must be set absent a waiver within sixty (60) days of the filing of the information, which data is usually contemporaneous with the arraignment date. All custody cases were set within the sixty (60) days. A substantial number of bail cases were set a day or two beyond the sixty (60) days when a defendant was willing to waive the sixty (60 day limit. All trial deputies were instructed to give first attention to custody cases and attempt to try or dispose of such cases on the date on which they were set. Bail cases could be continued for reasonable periods of time without the defendant sustaining any prejudice. Again, further motions for bail reductions and O. R. releases were made and granted in the trial courts. Varying amounts of time were spent with clients on these cases. In many cases when defendants were on bail, they did not make themselves available to the trial deputy for interview and consultation until the trial date.

As of this date, most of these cases have been tried or disposed of. The deputies displayed dedication and perseverance. Many hours of overtime were spent in court, in the office and in the jails without a cent of compensation above their normal salary. No deputy and no office is perfect or infallible, but declarant submits that only an analysis of each case individually could truly reveal whether representation was adequate. Declarant believes that the essential requisites for proper representation existed and were rendered by the Public Defenders Office of Los Angeles County.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: December 17, 1965

/s/ PAUL G. BRECKENRIDGE, JR.
Paul G. Breckenridge, Jr.

Subscribed and sworn to before me this 28th day of December, 1965.

VIVIAN C. HOWARD
Notary Public, in and for the County of Los Angeles, State of California.

APPENDIX B.

Affidavit.

State of California, County of Los Angeles—ss.

Toshio Harunaga, Deputy Public Defender of Los Angeles County, after being duly sworn, deposes and states as follows:

That on August 16, 1965, there were at least four Public Defenders present in court at all times;

That two or sometimes three Public Defenders were assigned in the holding tanks to hand each defendant a copy of his complaint and to inform each of the defendants of his charges;

That they were also informed of their constitutional rights to counsel, speedy trial, to remain silent and to reasonable bail;

That in respect to bail, the defendants were informed that the bail would be set at a fixed amount of $4,500, plus penalty as to each defendant, because of lack of information as to each defendant's background and that said bail was being set without prejudice and that the bail set could be reduced in the proper cases at a later time;

That in respect to counsel, defendants were informed that the services of the American Civil Liberties Union (ACLU) or the National Association for the Advancement of the Colored People (NAACP) were available to whichever defendant desiring their services, or that the services of the Public Defender were also available; and that an attempt was made to determine if any had private counsel to represent them.

That defendants then were brought out in groups of anywhere from four to twelve or more, and each group was represented by one or two Deputy Public Defenders at the time of arraignment;

That at the time of arraignment, the defendants were again informed of all of their constitutional rights by the Presiding Magistrate, Maurice T. Leader, as follows:

That each defendant had a right to be informed of the charges against him, right to a public and speedy trial, right to be confronted by witnesses against him and to cross-examine them, right to the processes of the Court to enforce attendance of witnesses on his own behalf, right to testify on his own behalf, but had a right not to be compelled to be a witness against himself, right to a reasonable bail, right to an attorney of his own choosing at all stages of the proceedings, and that the Public Defender was appointed to represent each defendant unless each indicated that he was represented by private counsel, and the Public Defender was appointed as to each defendant, and, as to bail, the Magistrate informed the defendants that their bail was being set without prejudice;

That prior to any of the defendants being arraigned, the question of bail was raised and Mr. A. L. Wirin, representing the ACLU, appearing amicus curiae, and several other attorneys whose names are not known to me at this time, appearing on behalf of the NAACP and other individual defendants, made a motion in respect to bail for all defendants which was joined in by himself and the other attorneys, and each attorney was given an opportunity to be heard, and the Court concluded, over the objection of the District Attorney

who was requesting that defendants be remanded without bail, that bail should be set for $4,500, plus penalty as to all defendants without prejudice, subject to a reduction at a later time because the Court had no information as to the background of each defendant at this time.

/s/ TOSHIO HARUNAGA
Toshio Harunaga
Deputy Public Defender

Subscribed and sworn to before me
this 17th day of December, 1965.

William G. Sharp, County Clerk
of Los Angeles County, California

LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
JAN 12 1966
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 784

DORIS WATKINS, *et al.*,

Petitioners,

—v.—

THE SUPERIOR COURT, LOS ANGELES COUNTY, CALIFORNIA, *et al.*

PETITIONERS' REPLY TO BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

JACK GREENBERG
LEROY D. CLARK
CHARLES STEPHEN RALSTON
10 Columbus Circle
New York, New York 10019

RAYMOND L. JOHNSON
4840 W. Washington Blvd.
Los Angeles, California

HERMAN T. SMITH
600 East 103rd Street
Los Angeles, California

ANTHONY G. AMSTERDAM
3400 Chestnut Street
Philadelphia, Pennsylvania

Attorneys for Petitioners

INDEX

PAGE

I. Respondents For The First Time Pose An Issue Of Fact, Demonstrating The Necessity For A Hearing In The Court Below 1

II. Substantial Federal Questions Were Squarely Presented To The Courts Of The State Of California .. 2

AUTHORITY

Boone, Prohibition: Use of The Writ of Restraint in California, 15 Hastings L.J. 161 (1963) 3

IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 784

DORIS WATKINS, *et al.*,

Petitioners,

—v.—

THE SUPERIOR COURT, LOS ANGELES COUNTY, CALIFORNIA, *et al.*

PETITIONERS' REPLY TO BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

I.

Respondents For The First Time Pose An Issue Of Fact, Demonstrating The Necessity For A Hearing In The Court Below.

Respondents for the first time in any court have responded to the substantial issues raised by petitioners by a Brief in Opposition to Writ of Certiorari. No other party, nor any California court, has denied or demurred to any of petitioners' allegations heretofore. One part of this response creates an issue of fact. Affidavits by members of the Los Angeles Public Defender's Office dispute the petitioners' factual allegations. But this Court is not a *nisi*

prius tribunal for resolution of factual issues. This Court therefore should grant the petition for certiorari and remand to the California courts for a full evidentiary hearing on the allegations of the petitions filed in those courts.[1]

II.

Substantial Federal Questions Were Squarely Presented To The Courts Of The State Of California.

Apart from presenting their contradictory version of the facts, respondents make a number of legal assertions. First, they argue that petitioners presented no federal question to the courts of the State of California (Brief in Opposition, p. 2), but this is transparently not the case, as the Petition for Writ of Certiorari indicates. (See pages 7-8, 10-11.)

Second, respondents argue that in a number of respects petitioners did not comply with California procedure. (Brief in Opposition, Parts II, III.) This assertion is con-

---

[1] Moreover, many of the facts set out in the affidavits in Respondents' opposition tend to support petitioners' claim that adequate counsel has not been provided. They establish that: the normal weekly case load per public defender was increased 50% to 75% (Appendix, p. 7); there is only *one* attorney assigned to criminal appeals (App., p. 1); the Los Angeles County office took over the misdemeanor jurisdiction previously handled by the City office and only ten of a possible forty-four authorized positions had been filled at the time cases began coming to trial (App., p. 2); only five attorneys are assigned to "the Psychiatric and Juvenile Courts" (App., p. 1), although some 534 juveniles were arrested, detained, and disposed of over a period of five to six weeks (see Petition for Writ of Certiorari, p. 20, n. 6). Respondents give no statement of the case load per deputy for juvenile or misdemeanor defendants. The serious questions of fact thus left unanswered even by the Respondents' affidavits require a full evidentiary hearing.

spicuously bare of authority. No such defense was presented to the California courts, and the California courts made no such ruling. On the contrary, as the authorities set forth in the Petition for Writ of Certiorari at pages 14 to 15 indicate, the procedure employed by petitioners was apt. (See, Boone, *Prohibition: Use of The Writ of Restraint in California,* 15 Hastings L. J. 161 (1963).)

Indeed, apart from their technical correctness, the writs of prohibition and mandamus are peculiarly appropriate in dealing with a widespread denial of constitutional rights as was here alleged. The type of relief requested seems suited to avoid problems of retroactivity and anxieties over possible releases from jail of large numbers of defendants which could arise when prosecutions are concluded and only post-conviction relief can be awarded. As a matter of sound policy it would seem better to issue an order granting anticipatory relief, rather than to seek to unravel a conviction that was thought to be settled.

It would be an anomaly if it were held that this otherwise appropriate remedy was unavailable, i.e., that the cases are moot, because of California's unilateral action of ignoring the petitioners' allegations while moving ahead with pending prosecutions. However, this result need not obtain, since respondents admit the propriety in the present proceeding of setting aside petitioners' convictions and the granting of new trials (Brief in Opposition, p. 4).

Petitioners therefore submit that the appropriate disposition of this cause would be for this Court to grant a petition for writ of certiorari, to vacate the judgment below, and to

remand for a hearing on their allegations, which have been challenged for the first time in this Court.

Respectfully submitted,

JACK GREENBERG
LEROY D. CLARK
CHARLES STEPHEN RALSTON
10 Columbus Circle
New York, New York 10019

RAYMOND L. JOHNSON
4840 W. Washington Blvd.
Los Angeles, California

HERMAN T. SMITH
600 East 103rd Street
Los Angeles, California

ANTHONY G. AMSTERDAM
3400 Chestnut Street
Philadelphia, Pennsylvania
Attorneys for Petitioners